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EXAMINER

POPE, DARYL C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERHARD DITTRICH

Appeal 2010-011244
Application 10/866,106
Technology Center 2600

Before: JOSEPH L. DIXON, ST. JOHN COURTENAY III, and
CARLA M. KRIVAK, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant filed a Request for Rehearing under 37 C.F.R. § 41.52 on May 20, 2013 (“Request”), requesting that we reconsider our Decision on Appeal of March 19, 2013 (“Decision”). In our Decision, we affirmed the Examiner’s rejection of claims 1–3, 5–7, and 10–14 under 35 U.S.C. § 103(a) as obvious over the combination of Bellavia and Kail. We regret the delay in responding to the Request.

We reconsider our Decision in light of Appellant’s arguments in the Request, but we decline to change the Decision. We are not persuaded that

we misapprehended or overlooked the points argued by Appellant in rendering our Decision.

ANALYSIS

Appellant presents four points misapprehended or overlooked in rendering our Decision. (Request 1–2). First, Appellant contends:

The Board has misunderstood what is meant by remotely in the present invention. The field devices which are serviced according to the present invention can be remotely located, as can the smoke detectors of Bellavia et al, but, and this is the important distinction which the Board has missed, the radio signal can be transmitted miles away. The remoteness applies to the field device *and* to the source of the radio signal. This is not the case with Bellavia et al. In Bellavia et al, the smoke detector may be remotely located, but the light source *must* be closely located. One does not expect the light source to be located several miles away.

(Request 1).

First, we note all claims on appeal are *silent* regarding any mention of “remote” or “remotely.” We also find Appellant’s point is unsupported by the arguments presented in the Appeal Brief, and is therefore untimely under 37 C.F.R. § 41.52 (a)(1).¹ To the extent our reviewing court might find Appellant’s argument compliant with the provisions of 37 C.F.R. § 41.52 (a)(1), we find Appellant’s point is contravened by Appellant’s Specification which describes a non-limiting, exemplary embodiment within the scope of claim 1, in which the transmitting unit “can be a simple, pocket-sized, hand

¹ 37 C.F.R. § 41.52 (a)(1) (“Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section”)

transmitter. Such transmitting units are used in many areas of application, e.g. as garage door openers or as radio remote controls for motor vehicles.” (Spec. ¶ 19). Therefore, we conclude our broader reading of claim 1 is reasonable, because we find our interpretation is fully consistent with Appellant’s Specification. (*Id.*).² For at least these reasons, we find Appellant’s first general argument does not identify any point overlooked or misapprehended by the Board in its Decision.

Second, Appellant contends “Why would one expect a person skilled in the art, faced with the problem faced by the inventor of the present invention to turn to Bellavia et al.?” (Request 2).

Because the Examiner (Final Act. 2–3) relies on an improvement expressly described in Kail (microprocessor 22, Fig. 1, col. 4), we find the Examiner provides sufficient articulated reasoning with some rational underpinning to establish why an artisan would have been motivated to improve the control circuitry of Bellavia (Fig. 7, 98c) by using or substituting a microprocessor, as described in Kail. (Final Act. 2–3). Therefore, we find Appellant’s general argument does not identify any point overlooked or misapprehended by the Board in its Decision.

Third, Appellant contends that the Board should rely upon common sense as identified in *KSR* (*KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007)) and not consider the Bellavia. (Request 2). For at least the reason given above regarding Appellant’s second contention, we find Appellant’s

² We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. See *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Because “applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

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general argument does not identify any point overlooked or misapprehended by the Board in its Decision.

Fourth, Appellant contends “Kail is of no consequence since it cannot remove the defect noted above in Bellavia et al.” (Request 2). We find Appellant’s general argument unavailing, given that all claims on appeal are silent regarding any mention of the argued terms “remote” or “remotely” (Request 1), as discussed above regarding Appellant’s first contention. Therefore, Appellant has not identified any points overlooked or misapprehended by the Board in its Decision.

In summary, Appellant’s attempt to characterize Bellavia’s disclosures as directed to non-remote configurations lacks merit. On this record, we are not persuaded that we misapprehended or overlooked the points argued by Appellant in rendering our Decision, and Appellant thus has not persuaded us of error in our Decision.

DECISION

We grant Appellant’s Request for Rehearing to the extent that we have reconsidered our Decision, but we deny the Request with respect to making any changes thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REQUEST FOR REHEARING - DENIED